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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

ANTHONY NGUYEN,

Plaintiff and Appellant,

v.

ANDREW D. WEISS, et al.,

Defendants and Respondents.

G057058

(Super. Ct. Nos. 30-2017-00958200  
& 30-2017-00958403)

O P I N I O N

Appeal from an order of the Superior Court of Orange County, James L. Crandall, Judge. Motion to dismiss appeal granted; appeal dismissed.

Anthony Nguyen in pro. per. for Plaintiff and Appellant.

Andrew D. Weiss in pro. per.; Law Offices of Andrew D. Weiss and Andrew D. Weiss for Defendants and Respondents.

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## THE COURT:\*

This is another appeal involving Anthony Nguyen (“Nguyen”), Toan Quy Thai (“Toan Thai”) and Minh Nguyet Thi Nguyen (“Minh Nguyen”) arising from six separate state court actions concerning the same general dispute. The dispute, which had its origins in a failed romance between Nguyen and Tu Hien Nguyen (“Hien”), the former wife of Thien Tran (“Tran”), has ensnared Tran’s attorney, Andrew D. Weiss, other attorneys, paralegals, and several bench officers in Nguyen’s litigation. Along the way, in addition to the state court actions, there have been numerous federal court actions filed by Nguyen, Toan Thai and Minh Nguyen. Nguyen, Toan Thai and Minh Nguyen have been declared vexatious litigants in both state and federal courts.<sup>1</sup>

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\* Before Fybel, Acting P. J., Thompson, J., and Goethals, J.

<sup>1</sup> In their motion to dismiss, respondents explain there have been “44 State and Federal actions, appeals and removals” filed by Nguyen, Toan Thai and Minh Nguyen relating to this dispute. Including this appeal, there have now been at least 18 appellate proceedings in this court. There have been 14 other appellate proceedings in this court arising from Orange County Superior Court case Nos. 30-2014-00722268, 30-2014-00722873, 30-2014-00729544, 30-2017-00906325, 30-2017-00958200, and 30-2017-00958403 including: *Tran v. Nguyen* (Nov. 6, 2015, G051373) [dismissed]; *Nguyen v. Tran* (Nov. 6, 2015, G051378) [dismissed]; *Nguyen v. Tran et al.* (May 4, 2017, G054734 [dismissed]; *Nguyen v. Tran* (May 30, 2017, G054876) [dismissed]; *Nguyen v. Tran* (Sept. 27, 2017, G055428) [dismissed]; *Nguyen v. Tran* (Nov. 30, 2017, G055427) [dismissed]; *Nguyen v. The Superior Court of Orange County et al.* (July 26, 2018, G056556) [dismissed]; *Nguyen et al. v. Duong et al.* (Oct. 22, 2018, G056778) [dismissed]; *Tran v. Nguyen* (January 7, 2019, G055022) [nonpub. opn., affirmed]; *Tran v. Nguyen* (January 7, 2019, G055078) [nonpub. opn., affirmed]; *Nguyen v. Tran et al.* (January 7, 2019, G055097) [nonpub. opn., affirmed]; *Nguyen v. Tran et al.* (January 7, 2019, G055130) [nonpub. opn., affirmed]; *Weiss et al. v. Thai et al.* (January 7, 2019, G056228) [nonpub. opn., dismissed]; and *Thai et al. v. Tran et al.* (April 4, 2019, G056770) [nonpub. opn., dismissed].

A 15th appeal arising from Orange County Superior Court case No. 30-2017-00906325, was filed by Minh Nguyen alone (Sept. 5, 2018, G056632) [dismissed]. Two more appellate proceedings—the 16th and 17th—were filed by Nguyen, going by the name Tuan Nguyen, arising from a separate trial court proceeding concerning another woman with whom Nguyen once had a romantic relationship ending with her obtaining a

The superior court cases that produced the current appeal began with complaints filed by Nguyen, later joined by Toan Thai and Minh Nguyen, against Weiss, Tran, Hien, and several other persons associated with Weiss and Tran, alleging the defendants are agents of various communist organizations, involved in money laundering for terrorist groups, participating in sham marriage operations, and engaging in all sorts of unseemly and criminal conduct. Cross-complaints were filed by various defendants alleging malicious prosecution among other causes of action.

On November 19, 2018, Nguyen, Toan Thai and Minh Nguyen, filed a notice of appeal from the following superior court orders: (1) the October 4, 2018 order denying their motions to amend their complaint and to reconsider another order pursuant to Code of Civil Procedure section 1008; and (2) the November 8, 2018 order denying Nguyen's special motions to strike (anti-SLAPP, Code Civ. Proc., § 425.16) cross-complaints filed against him by defendants and respondents Sunny Duong and Andrew Weiss. With regard to the latter order, the trial court denied Nguyen's anti-SLAPP motion as to both respondents' cross-complaints because the motions, filed on August 13, 2018, were untimely, and the court specifically declined to exercise its discretion to consider the late filings as there was no evidence presented to show why they were not timely filed. (Code Civ. Proc., § 425.16, subd. (f).) Additionally, as to Weiss's cross-complaint, the court had already denied Nguyen's anti-SLAPP motion several months earlier and the renewed motion offered no basis under Code of Civil Procedure section 1008 for reconsidering that ruling.

Because each of the appellants had been declared vexatious litigants and were subject to prefiling orders entered pursuant to Code of Civil Procedure

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domestic violence restraining order against him (16V000883), and in which he made similar allegations of terrorist activities by the plaintiff. (*Nguyen v. The Superior Court of Orange County et al.* (Sept. 15, 2016, G053946) [pet. denied]; *Nguyen v. Nguyen* (January 7, 2019, G054555) [nonpub. opn, dismissed].

section 391.7, they were ordered to file a request for permission from the Presiding Justice of this court to file their appeal. The court ordered the request for permission must explain as to each of the appellants the exact order or orders from which he or she appealed, why the order was appealable as to that specific appellant, and why the appeal as to that specific appellant had merit. (*In re R.H.* (2009) 170 Cal.App.4th 678, 708, disapproved on another ground in *John v. Superior Court* (2016) 63 Cal.4th 91, 98-100 [request must provide “facts and legal authority telling the court with specificity why his appeal or petition has merit”].)

Appellants filed a request for permission that contained no discussion of the specific orders from which they appealed, explanation as to why the orders were appealable, or why the orders should be disturbed by this court. The October 4, 2018 order denying appellants leave to amend their complaint and denying a motion for reconsideration affected appellants in their capacity as plaintiffs. Because the order was not appealable (*Dominguez v. City of Alhambra* (1981) 118 Cal.App.3d 237, 241 [order denying amendment of complaint generally not appealable]; Code Civ. Proc., § 1008, subd. (g) [order denying motion for reconsideration not immediately appealable]), and appellants offered no facts or legal authority telling the court why their appeal of the order had merit or should be permitted to proceed, the court denied appellants permission to proceed with their appeal of the October 4, 2018 order. The November 8, 2018 order, however, denied Nguyen’s anti-SLAPP motions as to cross-complaints filed by respondents. Because the order affected Nguyen in his capacity as a cross-defendant, and was an appealable order (Code Civ. Proc., § 425.16, subd. (i)), the court permitted the appeal of the November 8, 2018 order to proceed as to Nguyen. This appeal was dismissed as to Toan Thai and Minh Nguyen on December 13, 2018, and their dismissal from this appeal has become final.

Nguyen filed his opening brief on March 20, 2019. Respondents filed a motion to dismiss the appeal because Nguyen’s appellant’s opening brief fails to make

any cogent argument concerning the order on which the appeal was allowed to proceed—namely the November 8, 2018 order denying his anti-SLAPP motions as to respondents’ cross-complaints.<sup>2</sup>

Respondents’ motion to dismiss is well-taken and, based on the opening brief and record that has been provided, we will grant the motion and dismiss the appeal. The law is well-established: a trial court’s judgment is presumed to be correct on appeal, and it is the burden of the party challenging it to affirmatively demonstrate prejudicial error. (*Bianco v. California Highway Patrol* (1994) 24 Cal.App.4th 1113, 1125.) ““When a litigant is appearing in propria persona, he is entitled to the same, but no greater, consideration than other litigants and attorneys. . . . Further, the in propria

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In response to respondents’ motion, Nguyen filed an opposition, which does not coherently address any of respondents’ arguments, but makes additional allegations of criminal conduct by respondents. Nguyen also argues the motion should be denied because he was not served with it. Nguyen attaches what appears to be an e-mail to him from the court’s electronic service provider confirming he was not served electronically with the motion to dismiss by the service provider. But respondents’ motion to dismiss includes a proper proof of service by mail of the motion at Nguyen’s address of record.

After filing his opposition, Nguyen filed two additional documents. The first filed on May 2, 2019, is titled “motion to add to opposition and judicial notice to opposition to motion to dismiss of [respondents].” The document is comprised of several “declarations” purportedly by Nguyen, Toan Thai and Minh Nguyen, and two other individuals containing allegations of criminal misdeeds committed by all of the defendants connected to this litigation, and attaching various police reports and medical records of Nguyen. The second document filed on May 28, 2019 is titled “motion to add judicial notice to opposition to motion to dismiss of [respondents].” It contains reproduction of the “declarations” contained in the May 2, 2019 filing and adds an unfiled version of a federal court complaint titled “John Doe v. Bich An Thi Nguyen et al.” containing the same allegations against respondents and the other defendants connected to this litigation. There is no specific request in either filing to take judicial notice of the various documents and neither filing adds any reasonable analysis of the motion to dismiss. Accordingly, no further action will be taken on them.

persona litigant is held to the same restrictive rules of procedure as an attorney.’ [Citation.]” (*Id.* at pp. 1125-1126.) “‘The reviewing court is not required to make an independent, unassisted study of the record in search of error or grounds to support the judgment. It is entitled to the assistance of counsel [or the litigant if, as here, the litigant chooses to represent himself]. Accordingly every brief should contain a legal argument with citation of authorities on the points made. If none is furnished on a particular point, the court may treat it as waived, and pass it without consideration.’ [Citation.]” (*Sprague v. Equifax, Inc.* (1985) 166 Cal.App.3d 1012, 1050.) An appellant’s failure to articulate intelligible legal arguments in the opening brief may be deemed an abandonment of the appeal justifying dismissal. (*Berger v. Godden* (1985) 163 Cal.App.3d 1113, 1119.) Likewise, a failure to present arguments with references to the record and citation to legal authority can result in forfeiture of any contention that could have been raised on appeal. (Cal. Rules of Court, rule 8.204(a)(1)(B) & (C); *Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246 (*Nwosu*).)

We have reviewed and considered the opening brief and record filed in this matter. The opening brief is indecipherable and appears to be primarily a reproduction of Nguyen’s complaint and abundant filings in this court in other appeals. There is no cogent statement of the nature of the action, the relief sought in the trial court, and the order appealed from; and no coherent summary of the significant facts limited to matters in the record. Although the acronym “SLAPP” appears several times in Nguyen’s brief, there is no discussion as to how the cross-complaints constituted “SLAPPs” or reasonable explanation as to how the trial court erred by denying Nguyen’s anti-SLAPP motions. The table of authorities in Nguyen’s opening brief includes seven pages of what appear to be reproductions of either digest entries, or publisher’s summaries or headnotes from Supreme Court opinions concerning the anti-SLAPP statutes, and Code of Civil Procedure section 425.16 is reproduced within in his brief, but his argument section contains no analysis of either. There is not a single citation to the record Nguyen

designated for this appeal. We have reviewed the record designated by Nguyen and find it does not contain the most basic documents relating to, and required for review of, the trial court's November 8, 2018 order on the anti-SLAPP motions. The record does not contain Nguyen's August 13, 2018 anti-SLAPP motions that are the subjects of the order on appeal, any of the respondents' oppositions to those motions, or respondents' cross-complaints that were the subject of Nguyen's anti-SLAPP motions. Nguyen's status as a self-represented litigant does not relieve him of his obligation to present intelligible arguments supported by the record and legal authority (*Nwosu, supra*, 122 Cal.App.4th at pp. 1246-1247), and his failure to carry his appellate burden to identify any legal error in the trial court's rulings requires dismissal of this appeal.

#### DISPOSITION

The motion to dismiss is granted. The appeal is dismissed. Respondents are awarded their costs on appeal.